IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 25 of 1983
IN
SPECIAL CIVIL APPLICATIONNo 101 of 1982

WITH

CIVIL APPLICATION No 341 of 1983
AND
CIVIL APPLICATION No 2771 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA
Versus
GYAN CHAND CHATTAR

Appearance:
1. LETTERS PATENT APPEAL No. 25 of 1983
MR JC SHETH for Appellant No.
MR RP BHATT for Appellant No.
MR DC RAVAL for MR MR ANAND for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. By this Letters Patent Appeal invoking Clause 15 of the Letters Patent the appellant original respondent - Western Railway has assailed the judgment of the learned Single Judge dated 27/12/1982 recorded in Special Civil Application No. 101 of 1982, whereby the petition came to be allowed and the appellant authority came to be directed to reinstate the respondent - employee with all substantive as well as incidental monetary benefits.

2. It is, really, very very not only unfortunate, not only heart-stealing but startling and shocking delay in resolution of dispute of an incident of 1969, which has yet not ended its legal voyage as it has been passing through various legal conduit pipes.

3. We have heard the submissions made before us dispassionately. We have examined the entire factual portrait of the controversy and factual cantos and also we have considered the relevant proposition of law of service jurisprudence including the proportionality of punishment to a delinquent.

4. The respondent original petitioner came to be appointed with the Western Railway as a Shroff (moving or mobile Cashier) in the department of Pay and Cash in the scale of Rs.260-440 with effect from 8/2/1971 by the Chief Cashier, Western Railway. He came to be promoted to the post of Cashier in the scale of Rs.330-480 in the year 1977.

5. A departmental inquiry was started against the respondent in view of his involvement in an incident which occurred at Chandlodia Railway Station situated on railway line between Sabarmati and Viramgam, which ultimately culminated into the impugned order of reversion. The learned Single Judge, upon consideration of the evidence, facts and circumstances and relevant proposition of law found that the findings of the domestic Tribunal ordinarily not interferred with, but in view of and on the basis of "no evidence case" the findings against the respondent - employee were not supportable from the evidence and, therefore, the order

of removal from service passed by the disciplinary authority and modified by the appellate authority to the punishment of reduction in rank was also questioned before the learned Single Judge, which has been quashed and set aside. The learned Single Judge directed for payment of all arrears of back wages. However, it has been observed by the learned Single Judge that in the light of the observations made and the directions issued in the judgment of the learned Single Judge, the respondent no. 4 in the writ petition will reconsider the question of imposing suitable minor penalty on the respondent before us - original petitioner for his having refused to accept memos as mentioned in original Charge Nos. 4 and 5.

6. The contention and serious criticism against the interference by the learned Single Judge against the judgment of the appellate authority, prima facie may appear to be subtle but not sound. It may also appear to be captivating but not convincing. After having given our anxious thoughts and consideration to the entire factual profile of the case on hand, obviously when any person who has visited with a civil or evil consequences in a domestic Tribunal without basis of any evidence or 'no evidence', the Court can interfere with such an order of the domestic Tribunal or even an administrative order, it being perverse and unsupportable in absence of evidence. We, therefore, find no substance in the first contention advanced on behalf of the appellants.

7. Obviously next it would lead us to the examination and appreciation of the proportionality of the punishment as argued on behalf of the appellants by learned advocate Mr. Sheth. In that he has contended that the full back wages with all monetary benefits upon restoration and reinstatement on the original post and position in absence of any recognizable further evidence during the course of last 21 years would be unjust, unequitable and unreasonable. We may mention at this stage that the learned Single Judge has also directed the disciplinary authority - original respondent no. 4 for consideration of imposing suitable minor penalty on the respondent original petitioner - employee for his having refused to accept memos as per charge nos. 4 and 5. Since much water has flown from the date of direction given by the learned Single Judge and till date and again what has happened in between this long period, would be a matter of nobody's guess, as neither side has been able to highlight or enlighten us about the subsequent events, if any, or the present position. Nonetheless since there is a direction for consideration and resultant imposition

of minor penalty on the grounds articulated in charge nos. 4 and 5 in a departmental proceedings in absence of any subsequent service contours or the events instead of carrying out such direction after the span of almost more than two decades, which in all probabilities may not be possible to be successful, it would be just and reasonable to direct the appellants authorities to pay 50% of the back wages and all the consequential benefits including the retiral benefits without further imposing any minor penalty as directed by the learned Single Judge, as in our opinion, in the circumstances of the present case, that direction by long span of time has splayed into insignificance and that is the reason why we quash it and set aside and substitute the aforesaid direction for payment of arrears and monetary benefits.

8. The respondent original petitioner - employee has also filed cross objections against the only adverse direction made in the impugned judgment of the learned Single Judge with regard to reconsideration for imposition of minor penalty in view of the refusal of memos as mentioned in Charge Nos. 4 and 5. After having taken into consideration the facts and circumstances and the subsequent event, the cross objections filed by the respondent herein are required to be allowed and considered and resultant modification in the final order, which shall be mentioned in the last paragraph of this judgment.

9. In the light of the facts and circumstances narrated hereinbefore and considering the overall factual profile emerging from the record of the case and bearing in mind the celebrated principles of service jurisprudence and the latest pronounced proposition of law, the appeal shall stand partly allowed to the aforesaid extent and the cross objections shall also stand allowed, as stated hereinbefore, without any order as to costs. The impugned judgment of the learned Single Judge is confirmed and affirmed except to the extent hereinbefore highlighted and directed.

Obviously all the two Civil Applications would not assume any survival value when the lid is put in the lis of the main appeal.

[J.N. BHATT, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.